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10/565,383

01/23/2006

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

09/22/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/565,383 | Applicant(s) KAWAI ET AL. | |
| | Examiner JYOTI CHAWLA | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/23/2006 and 4/24/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-6 are pending and examined in the application.

Claim Objections

Claims 1-6 are objected to because of the following informalities:

Claim 1 as recited includes the term “characterized in that” in line 1 of claim 1. Applicant is suggested to change the phraseology to a more accepted US term, such as “wherein” to clarify the meaning of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112(second paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 is indefinite for the recitation of “quality improver”. The term “quality improver” in claims 1-6 is a relative term which renders the claim indefinite. The term “quality improver ” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term quality improver may have different meaning for different individuals, e.g., depending on the end use, what may be considered as a quality improvement (achieving a specific crispness), may be considered a factor deteriorating quality in another application. Thus, the term “quality improver” as recited in the claims renders the claims indefinite.

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Claim 3 as recited includes the phrase “alginic acid and /or pectin” in line 2, which makes it unclear whether the claim as recited includes alginic acid or pectin or both together. Clarification and correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(1) Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi et al (2002/0001659 A1) hereinafter Takahashi (IDS reference).

The applied reference Keichi has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e).

Regarding claim 1, Takahashi teaches of an oil absorption retarding agent, i.e., a quality improver, for a deep-fried food, wherein the oil absorption retarding agent that comprises a polysaccharide powder having a particle size of 100 µm or less (Publication, pages 1-2, paragraphs [0010, 0011 and 0023]). Takahashi also teaches of 20 µm as particle size (Page 4, Table 5), which would also imply an average particle size of 20 µm as no other particle size is disclosed.

Regarding claim 2, Takahashi teaches a quality improver for a deep-fried foods wherein the polysaccharide is a powder (Publication paragraphs [0023] and Page 4, Table 5). Claim 2, is directed to a product but has process steps (subjecting the polysaccharide to jet pulverization or freeze pulverization). Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

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production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Regarding claim 3, Takahashi teaches an oil absorption retarding agent or quality improver for a deep-fried foods wherein the polysaccharide is alginic acid (Publication, pages 1- 2, paragraphs [0015] and [0018, line 3]), as instantly claimed.

Regarding claim 4, Takahashi teaches of frying powder comprising the quality improver for deep-fried foods (Publication, page 2, paragraphs [0021] and [0024]), as instantly claimed.

Regarding claim 5, Takahashi teaches a frying food, such as doughnut or noodle, comprising the quality improver for a deep-fried food (Publication, page 2, paragraph [0021]), as instantly claimed.

Regarding claim 6, Takahashi teaches a deep-fried food prepared by cooking using the quality improver for a deep-fried food (Publication, page 2, paragraph [0021]), as instantly claimed.

Claims 1-6 are anticipated by Takahashi.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC
Examiner
Art Unit 1794

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794